



Senate

General Assembly

File No. 614

January Session, 2011

Substitute Senate Bill No. 1214

Senate, April 21, 2011

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING REVISIONS TO THE NONRESIDENT CONTRACTOR BOND STATUTE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (7) of section 12-430 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2011*):

4 [(7) (A) As used in this section, (i) "nonresident contractor" means a
5 contractor who does not maintain a regular place of business in this
6 state; (ii) "regular place of business" means any bona fide office,
7 factory, warehouse or other space in this state at which a
8 contractor is doing business in its own name in a regular and
9 systematic manner, and which place is continuously maintained,
10 occupied, and used by the contractor in carrying on its business
11 through its employees regularly in attendance to carry on the
12 contractor's business in the contractor's own name, except that
13 "regular place of business" does not include a place of business for a

14 statutory agent for service of process, or a temporary office or
15 location used by the contractor only for the duration of the contract,
16 whether or not at the site of construction, or an office maintained,
17 occupied and used by a person affiliated with the contractor; (iii)
18 "contract price" means the total contract price, including deposits,
19 amounts held as retainage, costs for any change orders, or charges for
20 add-ons; and (iv) "person doing business with a nonresident
21 contractor" does not include an owner or tenant of real property used
22 exclusively for residential purposes and consisting of three or fewer
23 dwelling units, in one of which the owner or tenant resides, provided
24 each nonresident contractor doing business with such owner or
25 tenant shall be required to comply with the bond requirements under
26 subparagraph (F) of this subdivision.

27 (B) Any person doing business with a nonresident contractor and
28 making payments of the contract price to such nonresident contractor
29 shall deduct and withhold from such payments an amount of five per
30 cent of such payments, unless such nonresident contractor has
31 furnished a certificate of compliance as described in subparagraph (E)
32 of this subdivision. The amounts so required to be deducted and
33 withheld shall be paid over to the commissioner by the last day of the
34 month following the calendar quarter following the calendar quarter in
35 which the first payment to the nonresident contractor is made, and
36 every calendar quarter thereafter. Each such payment to the
37 commissioner shall be accompanied by a form prescribed by the
38 commissioner. The amount required to be deducted and withheld
39 from the nonresident contractor, when so deducted and withheld, shall
40 be held to be a special fund in trust for the state. No nonresident
41 contractor shall have any right of action against a person deducting
42 and withholding under this subdivision with respect to any moneys
43 deducted and withheld and paid over to the commissioner in
44 compliance with or intended compliance with this subdivision.

45 (C) A nonresident contractor shall request, in writing, that the
46 Commissioner of Revenue Services audit the records of such
47 contractor for a project for which amounts were deducted and

48 withheld from such contractor under subparagraph (B) of this
49 subdivision. If such request is not made within three years after the
50 date the final payment of such amounts was made to the
51 commissioner, such contractor waives the right to request such audit
52 and claim a refund of such amounts. The commissioner shall, after
53 receipt of such request, conduct an audit and issue to the nonresident
54 contractor a certificate of no tax due or a certificate of tax due from
55 the nonresident contractor. Not later than ninety days after the
56 issuance of a certificate of no tax due, the commissioner shall
57 return to the nonresident contractor the amounts deducted and
58 withheld from such contractor and paid over to the commissioner.
59 Upon issuance of a certificate of taxes due, the commissioner may
60 return to the nonresident contractor the amount by which the
61 amounts deducted and withheld and paid over to the
62 commissioner under subparagraph (B) of this subdivision exceed
63 the amount of taxes set forth in the certificate, together with the
64 interest and penalties then assessed.

65 (D) When a person doing business with the nonresident contractor
66 pays over to the Commissioner of Revenue Services amounts deducted
67 and withheld pursuant to subparagraph (B) of this subdivision, such
68 person shall not be liable for any claim of the nonresident contractor
69 for such amounts or for any claim of the commissioner for any taxes
70 of the nonresident contractor arising from the activities of the
71 nonresident contractor on the project for which the amounts were
72 paid over. Such payment shall not relieve the person doing business
73 with the nonresident contractor of such person's liability for use
74 taxes due on purchases of services from such nonresident contractor.

75 (E) When a nonresident contractor enters into a contract with the
76 state, said contractor shall provide the Labor Department with
77 evidence demonstrating compliance with the provisions of chapters
78 567 and 568, the prevailing wage requirements of chapter 557 and any
79 other provisions of the general statutes related to conditions of
80 employment.

81 (F) Not later than one hundred twenty days after the
82 commencement of the contract, or thirty days after the completion of
83 the contract, whichever is earlier, a nonresident contractor may (i)
84 furnish a guarantee bond in a sum equivalent to five per cent of the
85 contract price, or (ii) deposit with the commissioner a cash bond in a
86 sum equal to five per cent of the contract price, in lieu of the
87 requirements contained in subparagraph (B) of this subdivision. The
88 commissioner may accept such bond on such terms and conditions as
89 the commissioner may require, and upon acceptance of such bond,
90 shall issue a certificate of compliance to the contractor. The provisions
91 of subparagraph (C) of this subdivision shall apply to such bond, upon
92 completion of the contract, in the same manner as such provisions
93 apply to amounts paid over under subparagraph (B) of this
94 subdivision.

95 (G) Upon the furnishing of a certificate of compliance by the
96 nonresident contractor to the person doing business with a
97 nonresident contractor, such person shall not be liable for any claim of
98 the commissioner for any taxes of the nonresident contractor arising
99 from the activities of such contractor on the project for which the bond
100 was provided. Such certificate of compliance shall not relieve the
101 person doing business with the nonresident contractor of such person's
102 liability for use taxes due on purchases of services from such
103 nonresident contractor.

104 (H) If any person doing business with a nonresident contractor fails
105 to deduct and withhold and pay over to the commissioner amounts
106 under subparagraph (B) of this subdivision, or fails to obtain a
107 certificate of compliance from the nonresident contractor pursuant to
108 subparagraph (G) of this subdivision, such person shall be personally
109 liable for payment of any taxes of the nonresident contractor arising
110 from the activities of such contractor on the project for which such
111 amounts or certificate were required.]

112 (7) (A) As used in this subdivision:

113 (i) "Nonresident contractor" means a contractor or subcontractor

114 who does not maintain a regular place of business in this state;

115 (ii) "Resident contractor" means a contractor or subcontractor who
116 maintains a regular place of business in this state;

117 (iii) "Verified contractor" means a nonresident contractor or
118 subcontractor who (I) is registered for all applicable taxes with the
119 department, (II) has filed all required tax returns with the department,
120 (III) has no outstanding tax liabilities to the department, and (IV) is
121 treated as a verified contractor by the commissioner pursuant to
122 subparagraph (H) of this subdivision and whose status as such is
123 verified by the commissioner pursuant to subparagraph (I) of this
124 subdivision;

125 (iv) "Unverified contractor" means a nonresident contractor or
126 subcontractor who is not a verified contractor;

127 (v) "Subcontractor" means a person who is engaged in contracting
128 real property work and who contracts with a prime or general
129 contractor to perform all or any part of the contract of the prime or
130 general contractor, or who contracts with a subcontractor who has
131 contracted to perform any part of the contract entered into by the
132 prime or general contractor;

133 (vi) "Prime or general contractor" includes (I) any person who
134 contracts with the owner, lessee or other person having authority to
135 enter into a contract involving the premises or property that is the
136 subject matter of the contract, to perform services or furnish materials,
137 or both, for the construction, alteration or improvement of any real
138 property or project, or (II) any person who owns or leases real estate
139 for the purpose of developing the real estate other than for his or her
140 own occupancy, and who, in the development of the real estate,
141 contracts, alters or makes improvements on it;

142 (vii) "Regular place of business" means any bona fide office, factory,
143 warehouse or other space in this state at which a contractor is doing
144 business in its own name in a regular and systematic manner, and

145 which place is continuously maintained, occupied and used by the
146 contractor in carrying on its business through its employees regularly
147 in attendance to carry on the contractor's business in the contractor's
148 own name, except that "regular place of business" does not include a
149 place of business for a statutory agent for service of process, or a
150 temporary office or location used by the contractor only for the
151 duration of the contract, whether or not at the site of construction, or
152 an office maintained, occupied and used by a person affiliated with the
153 contractor;

154 (viii) "Contract price" means the total contract price, including
155 deposits, amounts held as retainage, costs for any change orders or
156 charges for add-ons;

157 (ix) "Person doing business with an unverified contractor" does not
158 include an owner or tenant of real property used exclusively for
159 residential purposes and consisting of three or fewer dwelling units, in
160 one of which the owner or tenant resides;

161 (x) "Commissioner" means the Commissioner of Revenue Services;

162 (xi) "Department" means the Department of Revenue Services; and

163 (xii) "Certificate of compliance" means a certificate issued to an
164 unverified subcontractor by the commissioner, exonerating such
165 subcontractor from sales or use taxes owed by such subcontractor
166 under this chapter and any income tax withholding owed by such
167 subcontractor pursuant to chapter 229, but only to the extent that such
168 taxes arise from the activities of such subcontractor on the project for
169 which such certificate was required.

170 (B) Any person doing business with a prime or general contractor
171 who is an unverified contractor shall obtain proof that such contractor
172 has posted with the commissioner a good and valid bond with a surety
173 company authorized to do business in this state in an amount equal to
174 five per cent of the contract price, to secure the payment of any sums
175 due under this chapter either from such contractor or from any

176 subcontractor who enters into a contract with such contractor or any
177 subcontractor thereto to perform any part of the contract entered into
178 by such contractor or subcontractor thereto.

179 (C) (i) Every prime or general contractor who is an unverified
180 contractor shall post with the commissioner a good and valid bond
181 with a surety company authorized to do business in this state in an
182 amount equal to five per cent of the contract price, to secure the
183 payment of any sums due under this chapter either from such
184 contractor or from any subcontractor who enters into a contract with
185 such contractor to perform any part of the contract entered into by
186 such contractor. The commissioner shall release such contractor from
187 its obligations under such bond if it has been established, to the
188 commissioner's satisfaction, that such contractor has met the
189 requirements of either clause (ii) or (iii) of this subparagraph.

190 (ii) If a prime or general contractor who is an unverified contractor
191 establishes, to the satisfaction of the commissioner by submitting such
192 documentation, including any forms prescribed by the commissioner,
193 as the commissioner deems necessary, that such contractor has paid all
194 of the taxes that it owes in connection with the contract and that its
195 subcontractors who are unverified contractors have paid all of the
196 taxes that they owe in connection with the contract, the commissioner
197 shall release such contractor from its obligations under the bond.

198 (iii) (I) If a prime or general contractor who is an unverified
199 contractor establishes, to the satisfaction of the commissioner by
200 submitting such documentation, including any forms prescribed by the
201 commissioner, as the commissioner deems necessary, that such
202 contractor has paid all of the taxes that it owes in connection with the
203 contract, has held back an amount equal to five per cent of the
204 payments being made by such contractor in connection with the
205 contract to its subcontractors who are unverified contractors, and has
206 complied with the provisions of either subclause (V) or (VI) of this
207 clause, as the case may be, the commissioner shall release such
208 contractor from its obligations under the bond.

209 (II) Every prime or general contractor who is an unverified
210 contractor and doing business with a subcontractor who is an
211 unverified contractor shall hold back an amount equal to five per cent
212 of such payments otherwise required to be made to such subcontractor
213 until such subcontractor furnishes such contractor with a certificate of
214 compliance, as described in this clause, authorizing the full or partial
215 release of the amount held back from such payments to such
216 subcontractor. Such contractor shall provide written notice of the
217 requirement to hold back to each subcontractor who is an unverified
218 contractor not later than the time of commencement of work under the
219 contract by such subcontractor.

220 (III) The amount required to be held back from a subcontractor who
221 is an unverified contractor, when so held back, shall be held to be a
222 special fund in trust for the state. No such subcontractor shall have any
223 right of action against a prime or general contractor holding back
224 under this clause with respect to any amount held back in compliance
225 with or intended compliance with this clause.

226 (IV) Any subcontractor who is an unverified contractor shall, upon
227 the completion of its work under the contract, request the
228 commissioner, in writing, for the issuance of a certificate of compliance
229 to such subcontractor. Such subcontractor shall submit, with such
230 request, such documentation, including any forms prescribed by the
231 commissioner, as the commissioner deems necessary. The
232 commissioner shall, after receipt of such request and such required
233 documentation, review the documentation in the context of generally
234 accepted construction industry cost guidelines for the scope and type
235 of construction project. Not later than one hundred twenty days after
236 the receipt by the commissioner of the required documentation, the
237 commissioner shall either issue a certificate of compliance authorizing
238 the full or partial release of an amount held back from payments being
239 made to such subcontractor, or shall be deemed to have issued such
240 certificate.

241 (V) If the commissioner issues a certificate of compliance

242 authorizing a full release of the amount held back from a subcontractor
243 who is an unverified contractor, the prime or general contractor
244 holding back such amount shall pay over such amount to such
245 subcontractor. Such contractor shall not be liable for any claim of the
246 commissioner for any taxes of such subcontractor arising from the
247 activities of such subcontractor on the project.

248 (VI) If the commissioner issues a certificate of compliance
249 authorizing a partial release of the amount held back from a
250 subcontractor who is an unverified contractor, the prime or general
251 contractor holding back such amount shall pay over the released
252 amount to such subcontractor and shall pay over the unreleased
253 amount to the commissioner. When such contractor pays over to the
254 commissioner an amount held back in accordance with this subclause,
255 such contractor shall not be liable for any claim of such subcontractor
256 for such amount or for any claim of the commissioner for any taxes of
257 such subcontractor arising from the activities of such subcontractor on
258 the project for which the amount was paid over. If the amount that
259 such contractor is required to pay over to the commissioner is not paid
260 over on or before the thirtieth day after the date of mailing of such
261 certificate of compliance, such contractor shall be liable for a penalty
262 equal to ten per cent of such amount. The amount that such contractor
263 is required to pay over to the commissioner, and the penalty thereon,
264 may be collected under the provisions of section 12-35.

265 (VII) The commissioner shall treat the issuance to a subcontractor
266 who is an unverified contractor of a certificate of compliance
267 authorizing a partial release of an amount held back in the same
268 manner as the issuance to such subcontractor of a notice of assessment
269 under section 12-415.

270 (VIII) The issuance to a subcontractor who is an unverified
271 contractor of a certificate of compliance shall not preclude the
272 commissioner, in the exercise of the commissioner's authority under
273 this chapter, from examining the tax returns and books and records of
274 such subcontractor and, if appropriate and other than in connection

275 with the project for which the certificate of compliance was issued,
276 from making an assessment against such subcontractor.

277 (D) (i) Every prime or general contractor who is either a resident
278 contractor or a verified contractor and doing business with a
279 subcontractor who is an unverified contractor shall hold back an
280 amount equal to five per cent of such payments otherwise required to
281 be made to such subcontractor until such subcontractor furnishes such
282 contractor with a certificate of compliance, as described in this
283 subparagraph, authorizing the full or partial release of the amount
284 held back from such payments to such subcontractor. Such contractor
285 shall provide written notice of the requirement to hold back to each
286 subcontractor who is an unverified contractor not later than the time of
287 commencement of work under the contract by such subcontractor.

288 (ii) The amount required to be held back from a subcontractor who
289 is an unverified contractor, when so held back, shall be held to be a
290 special fund in trust for the state. No such subcontractor shall have any
291 right of action against a prime or general contractor holding back
292 under this subparagraph with respect to any amount held back in
293 compliance with or intended compliance with this subparagraph.

294 (iii) A subcontractor who is an unverified contractor shall, upon the
295 completion of its work under the contract, request the commissioner,
296 in writing, for the issuance of a certificate of compliance to such
297 subcontractor. Such subcontractor shall submit, with such request,
298 such documentation, including any forms prescribed by the
299 commissioner, as the commissioner deems necessary. The
300 commissioner shall, after receipt of such request and such required
301 documentation, review the documentation in the context of generally
302 accepted construction industry cost guidelines for the scope and type
303 of construction project. Not later than one hundred twenty days after
304 the receipt by the commissioner of the required documentation, the
305 commissioner shall either issue a certificate of compliance authorizing
306 the full or partial release of an amount held back from payments being
307 made to such subcontractor or shall be deemed to have issued such

308 certificate.

309 (iv) If the commissioner issues a certificate of compliance
310 authorizing a full release of the amount held back from a subcontractor
311 who is an unverified contractor, the prime or general contractor
312 holding back such amount shall pay over such amount to such
313 subcontractor. Such contractor shall not be liable for any claim of the
314 commissioner for any taxes of such subcontractor arising from the
315 activities of such subcontractor on the project.

316 (v) If the commissioner issues a certificate of compliance authorizing
317 a partial release of the amount held back from a subcontractor who is
318 an unverified contractor, the prime or general contractor holding back
319 such amount shall pay over the released amount to such subcontractor
320 and shall pay over the unreleased amount to the commissioner. When
321 such contractor pays over to the commissioner an amount held back in
322 accordance with this clause, such contractor shall not be liable for any
323 claim of such subcontractor for such amount or for any claim of the
324 commissioner for any taxes of such subcontractor arising from the
325 activities of such subcontractor on the project for which the amount
326 was paid over. If the amount that such contractor is required to pay
327 over to the commissioner is not paid over on or before the thirtieth day
328 after the date of mailing of such certificate of compliance, such
329 contractor shall be liable for a penalty equal to ten per cent of such
330 amount. The amount that such contractor is required to pay over to the
331 commissioner, and the penalty thereon, may be collected under the
332 provisions of section 12-35.

333 (vi) The commissioner shall treat the issuance to a subcontractor
334 who is an unverified contractor of a certificate of compliance
335 authorizing a partial release of an amount held back in the same
336 manner as the issuance to such subcontractor of a notice of assessment
337 under section 12-415.

338 (vii) The issuance to a subcontractor who is an unverified contractor
339 of a certificate of compliance shall not preclude the commissioner, in
340 the exercise of the commissioner's authority under this chapter, from

341 examining the tax returns and books and records of such subcontractor
342 and, if appropriate and other than in connection with the project for
343 which the certificate of compliance was issued, from making an
344 assessment against such subcontractor.

345 (E) When a nonresident contractor enters into a contract with the
346 state, such contractor shall provide the Labor Department with
347 evidence demonstrating compliance with the provisions of chapters
348 567 and 568, the prevailing wage requirements of chapter 557 and any
349 other provisions of the general statutes related to conditions of
350 employment.

351 (F) (i) If any person doing business with an unverified prime or
352 general contractor fails to comply with the provisions of this
353 subdivision, such person shall, except as otherwise provided by clause
354 (ii) of this subparagraph, be personally liable for payment of any taxes
355 of the unverified contractor arising from the activities of such
356 contractor on the project. For purposes of this clause, "taxes of the
357 unverified contractor" means any sales or use taxes owed by the
358 unverified contractor under this chapter and any income tax
359 withholding owed by the unverified contractor pursuant to chapter
360 229.

361 (ii) Except as otherwise provided in clause (iii) of this subparagraph,
362 the personal liability of any person doing business with an unverified
363 prime or general contractor for payment of any taxes of such
364 unverified contractor arising from the activities of such contractor on
365 the project shall not exceed an amount equal to five per cent of the
366 contract price required to be paid to such unverified contractor.

367 (iii) Notwithstanding the provisions of clause (ii) of this
368 subparagraph, any person doing business with an unverified prime or
369 general contractor shall, in addition to such person's personal liability
370 under clause (ii) of this subparagraph, remain liable for use taxes due
371 on purchases of services from such unverified contractor in connection
372 with the project.

373 (G) The provisions of this subdivision shall not apply to any
374 contract in which the contract price for the entire project is less than
375 two hundred fifty thousand dollars.

376 (H) (i) The commissioner shall treat as a verified contractor or
377 subcontractor every nonresident contractor or subcontractor who (I)
378 has been registered for all applicable taxes with the department for at
379 least three years preceding the contract; and (II) has filed all required
380 tax returns with the department and has no outstanding tax liabilities
381 to the department.

382 (ii) The commissioner shall treat as a verified contractor or
383 subcontractor every nonresident contractor or subcontractor not
384 otherwise eligible to be treated as a verified contractor or
385 subcontractor pursuant to clause (i) of this subparagraph who (I) is
386 registered for all applicable taxes with the department; (II) has filed all
387 required tax returns with the department and has no outstanding tax
388 liabilities to the department; and (III) posts with the commissioner a
389 good and valid bond with a surety company authorized to do business
390 in this state in an amount determined by the commissioner, as
391 provided in subdivision (1) of this section.

392 (I) Notwithstanding the provisions of section 12-15, the
393 commissioner shall, upon request, verify whether or not a nonresident
394 contractor or subcontractor is a verified contractor.

395 (J) Notwithstanding the provisions of section 12-15, the
396 commissioner shall, upon request, disclose to a person doing business
397 with a subcontractor who is an unverified contractor and otherwise
398 required by this subdivision to hold back an amount from payments
399 being made to such subcontractor, whether a certificate of compliance
400 has been requested by, or issued to, such subcontractor by the
401 commissioner, and the commissioner may disclose a copy of such
402 certificate to such person doing business with such subcontractor.

403 (K) Notwithstanding the provisions of section 12-15, the
404 commissioner shall, upon request, disclose to a person doing business

405 with a prime or general contractor who is an unverified contractor
406 whether a good and valid bond with a surety company authorized to
407 do business in this state has been posted with the commissioner by
408 such prime or general contractor.

409 (L) Notwithstanding the provisions of section 12-15, the
410 commissioner shall, upon request, verify whether or not any contractor
411 or subcontractor is a resident contractor.

| | | |
|---|-----------------|-----------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2011 | 12-430(7) |

FIN *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which streamlines the treatment of nonresident contractors with regard to the Department of Revenue Services in certain circumstances, does not result in any fiscal impact to the state or municipalities.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 1214*****AN ACT CONCERNING REVISIONS TO THE NONRESIDENT CONTRACTOR BOND STATUTE.*****SUMMARY:**

To secure payment of Connecticut taxes in connection with a nonresident contractor's in-state activities, current law requires a person doing business with a nonresident contractor to either (1) hold back and deposit with the Department of Revenue Services (DRS) 5% of the contract price or (2) obtain proof from the contractor that it has posted a bond for the equivalent amount with DRS.

This bill revamps these tax security requirements to, among other things:

1. require DRS, upon request, to verify whether nonresident contractors and subcontractors are registered with DRS for tax purposes, have filed all required tax returns, and, if required, have posted a bond with DRS;
2. impose the bond requirement only on nonresident general or prime contractors, and the hold-back requirement only on nonresident subcontractors, who are not so verified by DRS;
3. require general contractors, rather than customers, to hold back funds from their unverified subcontractors; and
4. require customers contracting with unverified general or prime contractors to obtain proof that the contractor has posted the required bond.

Current law makes anyone who does business with a nonresident contractor without complying with the security requirements

personally liable for the contractor's taxes stemming from the project. The bill applies this liability to anyone who does business with an unverified prime or general contractor without obtaining proof that the contractor has posted the required bond. It also caps the customer's liability at 5% of the contract price. The bill specifies that the personal liability applies to sales, use, or withholding taxes the contractor owes that arise from its activities under the contract. As under current law, a customer must also pay any use taxes due on purchases of services from the unverified contractor in connection with the project.

The bill exempts contracts whose total contract price is less than \$250,000. In addition, as under current law, the tax security requirements do not apply to a homeowner's or tenant's contract involving his or her own residence with three or fewer units.

As under current law, the "contract price" covers all contract charges, including deposits, retainage, change orders, or charges for add-ons.

EFFECTIVE DATE: October 1, 2011

NONRESIDENT CONTRACTORS

Under the bill, as under current law, a nonresident contractor or subcontractor is one who does not continuously maintain or occupy any Connecticut office, factory, warehouse, or other space where it regularly and systematically does business in its own name through employees who are (1) in regular attendance and (2) carrying on the contractor's business in the contractor's own name.

VERIFIED NONRESIDENT CONTRACTORS AND SUBCONTRACTORS

The bill requires the DRS commissioner, upon request, to verify whether a nonresident contractor or subcontractor:

1. has (a) been registered with DRS for all applicable taxes (sales and use and income tax withholding) for at least three years before it concludes a contract covered by the bill's security

requirements, (b) filed all required tax returns, and (c) no outstanding tax liabilities with DRS; or

2. (a) is registered with DRS for all applicable taxes, (b) has filed all required tax returns and has no outstanding liabilities with DRS, and (c) has posted a valid bond with DRS in an amount the commissioner determines up to a maximum of six times the contractor's average tax liability. The bond must be with a surety company authorized to do business in Connecticut.

It requires DRS to treat contractors and subcontractors who meet either of these two sets of conditions as "verified contractors." Verified contractors are not subject to the bill's tax security requirements (see below).

UNVERIFIED NONRESIDENT CONTRACTORS AND SUBCONTRACTORS

Tax Security Requirements

Current law allows two alternative methods of ensuring tax security when someone hires a nonresident contractor for a project in Connecticut. The first is for the customer to hold back 5% of the contract price and deposit it with DRS. The second is for the nonresident contractor to post a bond equal to that amount with DRS.

The bill divides nonresident contractors into two categories:

1. "prime or general" contractors, who either (a) make contracts with those who own or control real property to perform services, furnish material, or both on construction projects involving the property or (b) own or lease real estate to develop for others to occupy and, in the course of development, contract, change, or improve it, and
2. subcontractors, who contract with either prime or general contractors or other subcontractors to perform part of the contract work.

The bill eliminates the customer hold-back option; imposes the bond

requirement only on unverified nonresident contractors who qualify as general or prime contractors; and requires general or prime contractors, rather than customers, to hold back 5% of the payment to unverified subcontractors to provide security for tax payment.

Bond Requirement for Unverified General Contractors

The bill requires every unverified prime or general contractor that makes a contract priced at more than \$250,000 for a project in Connecticut to post a bond with DRS equal to 5% of the contract price. The bond is to secure payment of required taxes by both the general or prime contractor and its subcontractors.

Hold-Back Requirements for Unverified Subcontractors

The bill requires any resident or verified or unverified nonresident general or prime contractor that does business with an unverified subcontractor to hold back 5% of its payments to the subcontractor until the subcontractor furnishes a certificate of compliance from DRS authorizing the general contractor to release all or part of the hold-back (see below). The contractor must keep the hold-backs in a special fund in trust for the state. The bill eliminates the requirement that hold-backs be periodically transferred to DRS and that DRS hold the money in a special trust fund.

General or prime contractors must give unverified subcontractors written notice of the hold-back requirements by the time the subcontractor begins work under the contract. As under current law, no subcontractor may sue a general or prime contractor for holding back payments to comply with the bill.

RELEASING BONDS AND HOLD-BACKS

Under current law, a contractor who posted a bond or whose payments were withheld must file a written request, within three years after the final payment to DRS, that the DRS commissioner audit its records for the project to determine if it owes taxes. If a contractor fails to file its request in time, it waives the right both to an audit and any refund of excess amounts withheld or excess bond amounts. DRS must

refund excess amounts from the bond or hold-back within 90 days after completing its audit and issuing a certificate of no tax due.

The bill instead establishes separate procedures for releasing bond obligations and hold-backs.

Bond Obligations

The bill requires the DRS commissioner to release an unverified general or prime contractor from its bond obligation once the contractor satisfies the commissioner, by submitting necessary documentation that includes any DRS-prescribed forms, that:

1. the contractor and its unverified subcontractors have paid all the taxes they owe in connection with the contract or
2. the contractor has (a) paid all taxes it owes in connection with the contract, (b) held back the required 5% of its payments to any unverified subcontractors, and (c) released the hold-backs to a subcontractor in accordance with a DRS certificate of compliance authorizing it to release all or part of those amounts.

Hold-Backs – Certificate of Compliance

Once an unverified subcontractor's work on the contract is completed, the bill requires it file a written request that the DRS commissioner issue a certificate of compliance authorizing the general contractor to release all or part of its hold-backs. After receiving the request and any documentation and forms he or she considers necessary, the commissioner must review it in the context of generally accepted construction industry cost guidelines for the project's scope and type. The commissioner has 120 days after receiving the required documentation to issue a certificate allowing release of all or part of the hold-backs. If no certificate is issued within that time, the commissioner is deemed to have issued one.

If the certificate authorizes the general contractor to release the full amount of the hold-back, the contractor must do so; if the certificate authorizes partial release of part of the hold-back, the general

contractor must pay the required amount to the subcontractor and pay the balance to DRS. In the latter case, the contractor is liable neither to the subcontractor for failing to pay the full amount nor to the commissioner for failing to pay the subcontractor's taxes arising from the project.

The bill imposes a 10% penalty on any general contractor who fails to pay DRS the balance of a partially released hold-back within 30 days after DRS mails the certificate of compliance. It allows DRS to use existing tax collection procedures to collect the required payment and the penalty. Under the bill, DRS must treat issuance of a certificate authorizing a partial release of hold-backs as a notice of assessment under the sales and use tax law. That law requires the commissioner to give written notice of the assessment, either by personal service or by mail, at the address appearing in DRS records.

The certificate of compliance does not prevent the commissioner from exercising his or her authority to examine an unverified subcontractor's tax returns, books, and records and, if appropriate, making an assessment against the subcontractor for tax deficiencies stemming from activities other than the project to which the certificate of compliance applies.

DRS DISCLOSURES

In addition to allowing DRS to verify nonresident contractors and subcontractors, the bill requires it, upon request, to:

1. disclose, to a person doing business with an unverified subcontractor and who is consequently required to hold-back part of the subcontractor's payments, whether the subcontractor has requested or been issued a certificate of compliance;
2. disclose, to a person doing business with an unverified prime or general contractor, whether that contractor has posted the required bond; and
3. verify whether a contractor or subcontractor is a resident

contractor.

The bill also allows the DRS commissioner to give a requestor a copy of a subcontractor's certificate of compliance.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 52 Nay 0 (04/07/2011)